

Background: The Fort DuPont redevelopment and Preservation Corporation submitted an application to DNREC to install slope stabilization revetment along the eastern bank of the Delaware City Branch Channel to the Chesapeake and Delaware Canal. DNREC published a public notice in September 2020 and held a virtual Public Hearing in January 2021. This letter supports and expands on my October 2020 Public Notice comments.

This letter addresses the known material misrepresentations in the basic application, in the appendix and at the public hearing. The final section of this letter addresses other facts relevant to the application's approval. In each case the applicant knew or should have known the facts presented were inaccurate, misleading or false.

### **BASIC APPLICATION COMMENTS**

The misrepresentations, missing and inaccurate information known to exist in the application are presented in this section line-by-line:

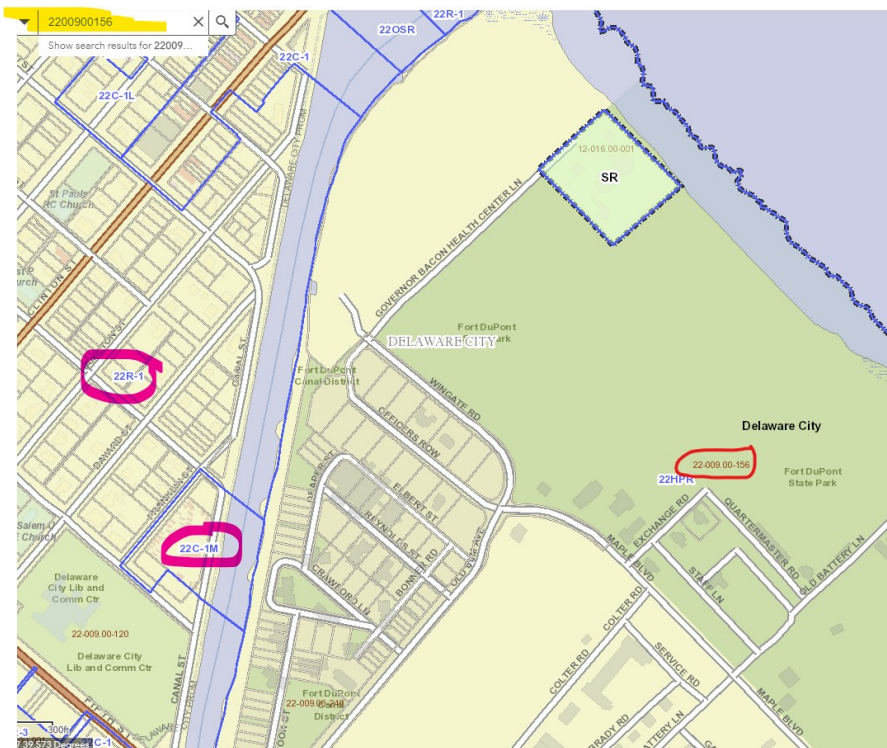
Line 4. The applicant indicates that this project is not a replacement of any previous project but is a new project. The fact that the project is replacing the last surviving, intact remnants of the original nearly 200-year old Chesapeake and Delaware Canal is not acknowledged on Line 4. The application, appendix and public hearing presentation are all silent to the point that the work site is of national historic importance. It is made more odd because the Fort Corp has in its name "Preservation" and files its corporate taxes using a NAICS Code for a historical site. It is far simpler for the applicant to omit the historical reference to avoid mandatorily answering Line 16 in the Basic Application. Line 16 requests information about the previous structures and explicitly requests to know if the structures pre-date 1969. However, the Applicant's Public Hearing Presentation refers to the previous, existing slope stabilization project in Slide 7:

**"The Revetment project rebuilds the former rip-rap armored slope.  
The original rip-rap armored slope has deteriorated." -Slide 7**

Additionally, the "Scaled Plan View" shows the location of several of the pre-1969 remnants within the worksite. Some of these pre-1969 structures are of such size and so imposing that they can be seen from shore with an unaided eye. It would be impossible for the agent or applicant not to see them while preparing this application. Therefore, the applicant and agent knew or should have known of the pre-existing structures at the time the application was signed and certified as true and accurate by both parties.

Line 7 requests the name of the site owner “(if different from the applicant)”, The applicant leaves blank the name of the owner. By leaving that portion of Line 7 blank, the Fort Corp misrepresents the site owner as themselves. The actual land owner is the federal government. The application requires deeds to the work site parcels however the applicant fulfills the requirement for deeds by attaching deeds for the parcels which the General Assembly provided the corporation. The deeds included in the Basic Application include deeds for various other parcels of Fort DuPont lands but not the Project Work Site. Exhibit A provides evidence that the Executive Director of the Fort DuPont Redevelopment and Preservation Corporation knew the statement in Line 7 in the Basic Application and on Slide #3 of the Applicant’s Public Hearing Presentation were false but signed the application at Line 21 certifying the answers on Line 7 as “true and accurate.” This is a statement that the Executive Director knew or should have known to be false at the time.

Line 9 misrepresents the Tax Parcel ID Number of the project location. The applicant used a Tax Parcel ID not associated with the work site. The Tax Parcel supplied by the applicant between Wingate Road and the Delaware River. The Tax Parcel supplied has no association or proximity to the work site. Therefore, the applicant and agent knew or should have known that the Tax Parcel provided on Line 9 was false at the time the application was signed and certified as true and accurate by both parties.



**Figure 1. (above) Highlighted in the upper left-hand corner of the figure is the Parcel Tax ID Number reported by the Fort Corp on line 9, the work site. That parcel is circled on the map in red on the 6(f) parcel between Wingate Road and the river. Also shown in blue are the zoning boundaries.**

Line 12 requests information regarding the jurisdiction of the wetlands at the project site. The applicant, having provided false and misleading information as to the owner of the work site and the Tax Parcel involved, further misrepresent the Wetlands as “public”. The Joint Wetlands Inventory Map indicate that the wetlands in the Delaware City Branch Channel appear as “Federally-regulated wetlands”. Therefore, the applicant and agent knew or should have known that the Delaware City Branch Channel are Federally–Regulated and the answer to Line 12 was false at the time the application was signed and certified as true and accurate by both parties.

Line 14A requests the names and addresses of adjoining property owners to the work site. The applicant, having provided false Parcel Tax ID as the location of the work site, states:

**“All directly adjoining properties are owned by the Fort DuPont Preservation & Redevelopment Corporation.” - Line 14B, Application**

This statement was not true for the Tax ID provided in Line 9 as 2200900156 where the NCC owns the Sewer Plant at the Delaware River as well as the Army Corps of Engineers’ spoils disposal site. The statement is equally false for the federally owned Delaware City Branch Channel. The City of Delaware City is an adjoining landowner to the Delaware City Channel. The applicant’s answer also evades the interests of all the leaseholders in the Delaware City Branch Channel which have a direct stake in the application.

Line 14B requests the names and addresses of property owners within 1000 feet of the worksite if it has wetlands. Although it appears that DNREC intends this response for only state-regulated wetlands, the application does not differentiate between the jurisdictions of the wetland. The applicant states wetlands are “Not Applicable”. However the engineer drawings include “WETLAND PERMIT EXHIBITS” throughout the packet of drawings. No notification of this application was made available to stakeholders via US Mail or express mail services.

Line 15B inaccurately checks both the yes and the no blocks. If “YES” The date of the Joint Processing Meeting.

Line 16 of the Basic Application was discussed with Line 4. Line 16 requests to know the structures or fill at the worksite. The applicant states there are no existing structures at

the worksite now or prior to 1969. Both answers are false. The applicant refers to an existing slope stabilization and the Scaled Plan View shows prior structures. Therefore, the applicant and agent knew or should have known that there are existing structures located at the work site today and remnants of structures prior to 1969 and that the answer to Line 16 was false at the time the application was signed and certified as true and accurate by both parties.

Line 18 misrepresents the other permits held by the applicant from DNREC: NDPES, Stormwater, SP-106/17 with extension as well as the Canal District NOI. Therefore, the applicant and agent knew or should have known that there existed additional permits issued to the applicant at the time the application was signed and certified as true and accurate by both parties.

Line 19 requests the applicant to permit or not permit an agent to act on his behalf. The applicant failed to authorize an agent by the omission to answer Line 19.

Line 20 certifies the answers to the application are true and accurate when the agent knew or should have known of the information represented material misrepresentations.

Line 21 certifies the answers to the application are true and accurate when in fact, the applicant knew or should have known the information represented material misrepresentations. The material representations were made to assent to the false information in order to have the application approved by competent authority.

#### **APPENDIX I: Rip-Rap Sills and Revetments**

Appendix I, Line 1 misrepresents the existing pre-1969 shoreline stabilization present at the site. Please refer to Basic Application Lines 4 and 16.

Appendix I, Line 1 requests photos of the entire existing structure. The applicant fails to provide the photographs of the existing pre-1969 shore stabilization structures although many of the items but not all are shown on the application engineering drawings. This is in violation of the Appendix.

Appendix I, Line 4 misrepresents the vegetation as “grasses, shrubs and saplings. The vegetation is dominated by invasive species (phragmites). Slide #10 from the Applicant’s Public Hearing Presentation provides evidence that trees of much larger size than “grasses, shrubs and saplings” are present. Slide #10 shows the base of a removed tree.



**Figure 2. Slide #10 from the Applicant’s Public Hearing Presentation showing the base of a removed tree.**

The misrepresentation might be an attempt to short cut the application process and to avoid public scrutiny of the method of construction and the detrimental effect of removing the trees.

Appendix I, Line 5 is incorrect. Line 5 indicates that the revetment requires +/- 5,267 cubic yards of rip rap. However, using the required formula stated in Appendix I Line 5 should be substantially greater. The drawings shown at Cross-Sections at A-A, B-B and D-D the vertical rise is between 22.5 and 23.5 feet. To maintain the 2:1 slope the run along the base would be between 45 and 47 feet. Using the formula required in Appendix I:

$$“.05 \times \text{run} \times \text{rise} \times \text{length} / 27 = \text{total cubic yards}”$$

The average vertical rise between the three cross-section drawings is 23 feet. With a 2:1 slope equals a run of 46 feet. The required formula per Appendix I should be:

$$0.5 \times 46 \times 23 \times 2000 / 27 = 39,185 \text{ cubic yards.}$$

The applicant however states in Appendix I, Line 5 that the total cubic yards will be less than 1/7<sup>th</sup> as much as the application requires at 5,267 cubic yards.

Appendix I, Line 8C indicates no backfill will be used in the project. However the Scaled Plan View engineering drawings at cross-sections A-A and D-D indicate 4’ of backfill above the existing grade will be required.

Appendix I, Line 8D answers “NO” to using a geotextile. However the in Scaled Plan View engineering drawings there is Geotextile “GEOTEX 111F OR APPROVED EQUIVALENT” between the soil and the rip-rap.

## ENGINEER DRAWINGS (SCALED PLAN VIEW)

The Cross-Section Drawings have several notable issues.

First, although there were no property owners provided at Line 14B for wetlands, the project is nonetheless in wetlands and acknowledged in the Project Title on each page which starts with the label “WETLAND PERMIT EXHIBITS”.

Second, the Project Title is a small mistake but with enormous ramifications. The title of the project is given “Fort DuPont Branch Channel Revetment”. As previously mentioned, the name of the waterway is the “Delaware City Branch Channel to the Chesapeake and Delaware Canal”. For clarity, there is no Fort DuPont Branch Channel.

The actual project is “Fort DuPont Revetment” to the “Delaware City Branch Channel”. The correct title states that the water body is the Delaware City Branch Channel. The actual work is for the Fort DuPont Revetment along the Delaware City Branch Channel.

The cross-sections at A-A is to represent a 2:1 finish grade. However, the drawing depicts a steeper grade than Cross Sections A-A and D-D.

Cross-Section C-C depicts an outfall. The engineering drawing places “GEOTEX 111F OR APPROVED EQUIVALENT” placed under the rip-rap. However, there is no Geotextile between the soil and rip-rap.

**PUBLIC HEARING:** These comments are regarding the Applicant’s Public Hearing Presentation.

### Material Misrepresentation of Channel Ownership

The image shows a presentation slide titled "Branch Channel Revetment Project History". The slide is numbered "3" in a green box. It has a blue header bar. The content is organized under the heading "Planning for the Future". There are two main bullet points, each with a sub-bullet point. The first main bullet point is "Fort DuPont Redevelopment and Preservation Corporation" with a sub-bullet "Established by Delaware Legislature by HB 310 in July 2014 to preserve and protect the recreational amenities of Fort DuPont and to make capitol Improvement to the 325 Acre Complex". The second main bullet point is "Chesapeake and Delaware Branch Channel" with a sub-bullet "The Branch Channel was transferred to the Fort DuPont Redevelopment and Preservation Corporation State of Delaware through the America's Water Infrastructure Act of 2018".

**Branch Channel Revetment**  
**Project History**

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Planning for the Future

- Fort DuPont Redevelopment and Preservation Corporation
  - Established by Delaware Legislature by HB 310 in July 2014 to preserve and protect the recreational amenities of Fort DuPont and to make capitol Improvement to the 325 Acre Complex
- Chesapeake and Delaware Branch Channel
  - The Branch Channel was transferred to the Fort DuPont Redevelopment and Preservation Corporation State of Delaware through the America's Water Infrastructure Act of 2018

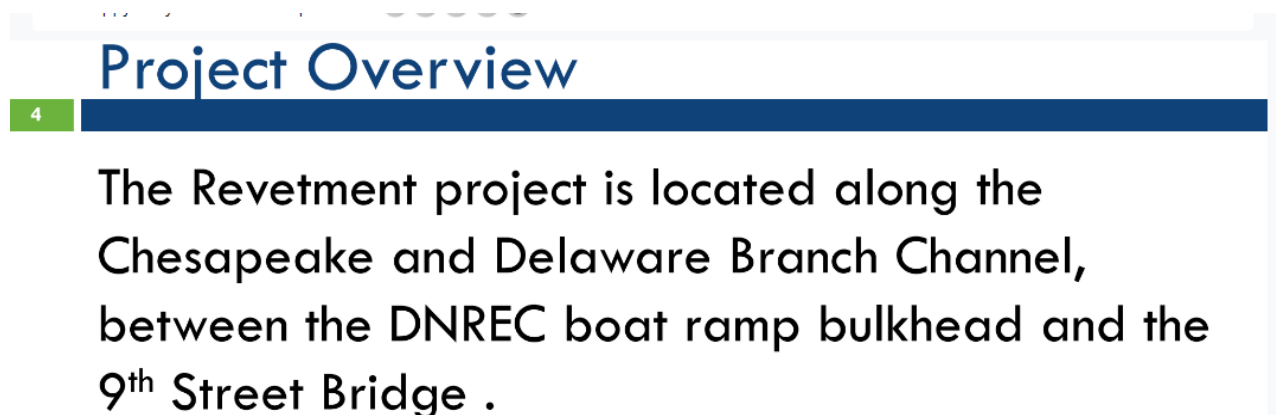
**Figure 3. Slide #3 from Applicant’s Public Hearing Presentation**

Slide #3 shown above labels the work site as the “Chesapeake and Delaware Branch Channel”. As previously discussed, the work site is on the Delaware City Branch Channel to the Delaware and Chesapeake Canal. It is often referred to as the Delaware City Branch Channel. For clarity purposes, there is no Chesapeake and Delaware Branch Channel in Delaware City.

Slide #3 falsifies the ownership of the Delaware City Branch Channel. The slide states, “The Branch Channel was transferred to the Fort DuPont Redevelopment and Preservation Corporation Delaware State of Delaware through America’s Water Infrastructure Act of 2018.” The transfer of the ownership of the Delaware City Branch Channel did not occur. (See Exhibit A)

#### Applicant’s Demonstrated Lack of Work Site Geography

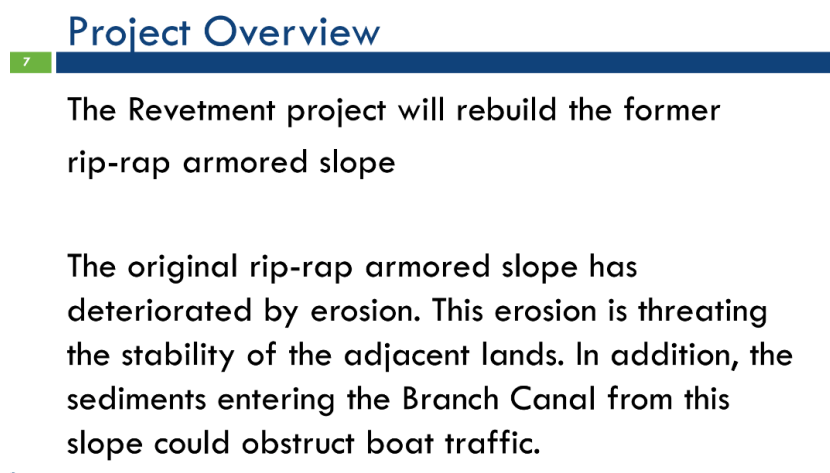
Slide #4 (next page) of the Applicant’s Public Hearing Presentation refers to the work site as the Chesapeake and Delaware Branch Channel. The worksite is the Delaware City Branch Channel as previously stated. There is no Chesapeake and Delaware Branch Channel in or near Delaware City. However, the slide places the southern boundary of the work site as the “9th Street Bridge”. There is no 9<sup>th</sup> Street Bridge at the work site or in Delaware City. There is one bridge that crosses the Delaware City Branch Channel. In the past the bridge crossing the DC Channel was referred to as the 5<sup>th</sup> Street Bridge but was recently dedicated as the Michelle Smith Memorial Bridge.



**Figure 4. Slide #4 from Applicant’s Public Hearing Presentation which incorrectly refers to the Chesapeake and Delaware Branch Channel**

Admission of False Information in the Basic Application and Appendix I

Neither the Basic Application nor Appendix I admit to the prior structures at the work site. The Basic Application and Appendix state that the proposed construction is new, that it does not replace any previous structures. Yet the Applicant's Public Hearing Presentation acknowledges that previous structures exist at the work site on the Delaware City Branch Channel.



Slide 7: Project Overview

The Revetment project will rebuild the former rip-rap armored slope

The original rip-rap armored slope has deteriorated by erosion. This erosion is threatening the stability of the adjacent lands. In addition, the sediments entering the Branch Canal from this slope could obstruct boat traffic.

**Figure 5. Slide 7 (above) from the Applicant's Public Hearing Presentation**

Posted below are the two lines snipped from the Basic Application that falsely deny the presence of previous structures at the work site. Slide's 7 bullet points are incongruent with the statements that are certified as true and accurate in the Basic Application.

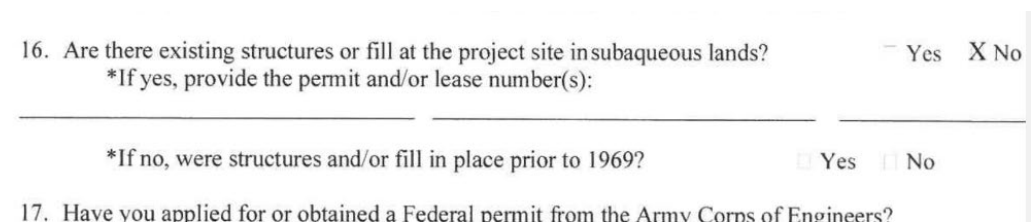


Section 2: Project Description

4. Check those that apply:

☒ New Project/addition to existing project?      ☐ Repair/Replace existing structure? (If checked, must answer #16)

**Figure 6. Line 4 from the Permit Application, No indication of "Repair/Replacement"**



16. Are there existing structures or fill at the project site in subaqueous lands?      ☐ Yes    ☒ No

\*If yes, provide the permit and/or lease number(s):

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\*If no, were structures and/or fill in place prior to 1969?      ☐ Yes    ☐ No

17. Have you applied for or obtained a Federal permit from the Army Corps of Engineers?

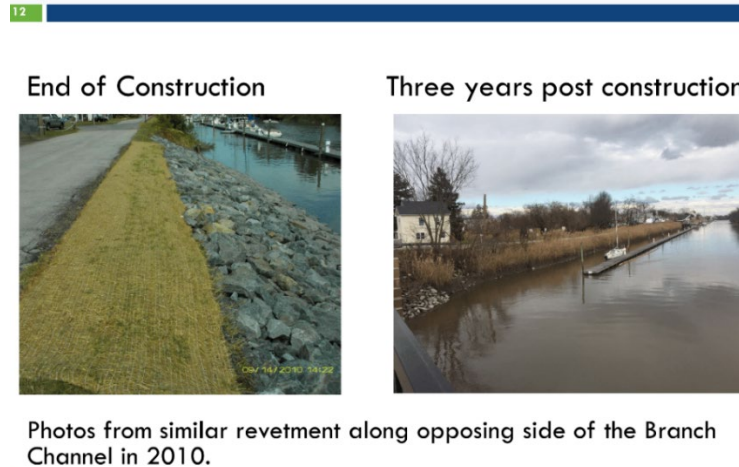
**Figure 7. Line 16 from the Permit Application, No existing structures & none before 1969**



Therefore, the applicant and agent knew or should have known that there existed structures before 1969 and that the answer to Line 16 was false at the time the application was signed and certified as true and accurate by both parties.

Applicant's Comparison: East Bank Revetment Will Be Similar to West Bank Revetment

The Applicant made a comparison of the west bank revetment to the proposed east bank revetment in Side #12 (below) of the Applicant's Public Hearing Presentation.



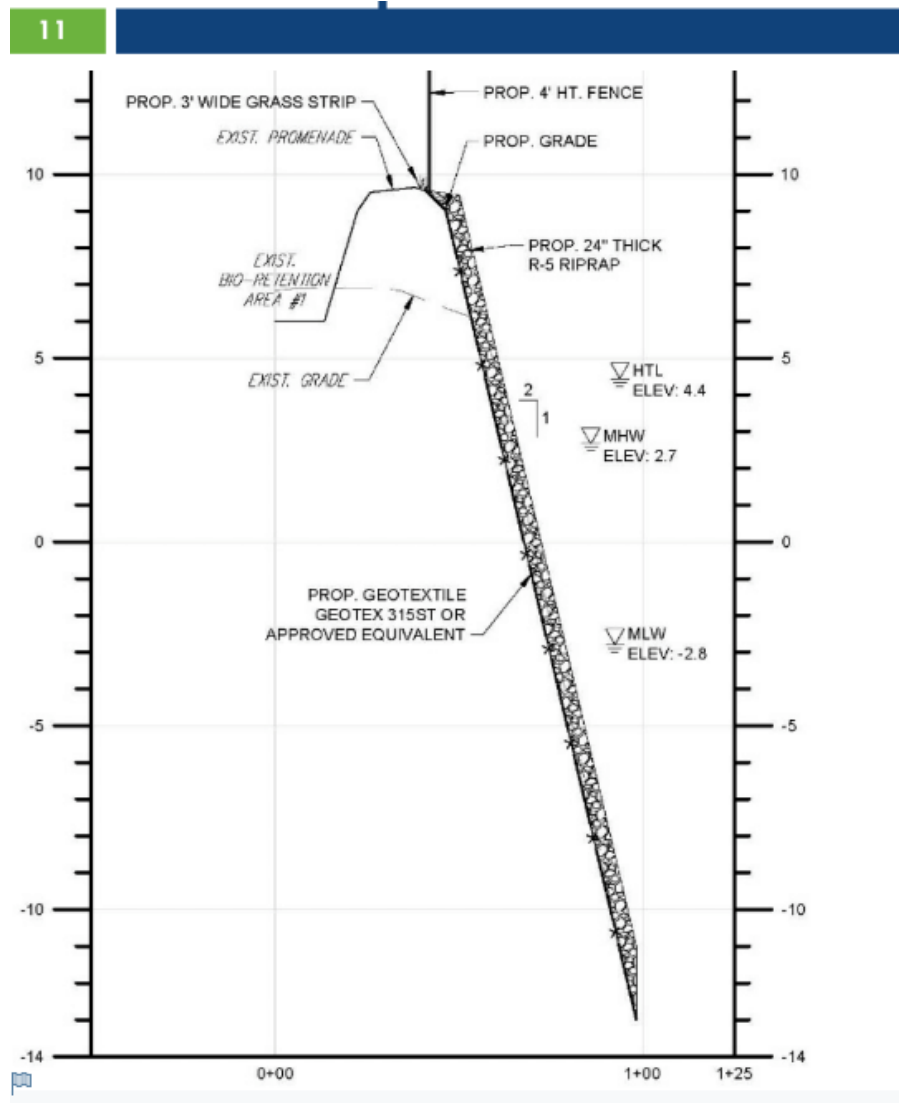
**Figure 8. Slide #12 from the Permit Application, Similar Revetment West Bank**

The applicant showed Slide #12 (previous page) and made comments to the effect:

1. both revetments were similar and
2. the photo on the right showed vegetative growth after three years

Both statements are incorrect.

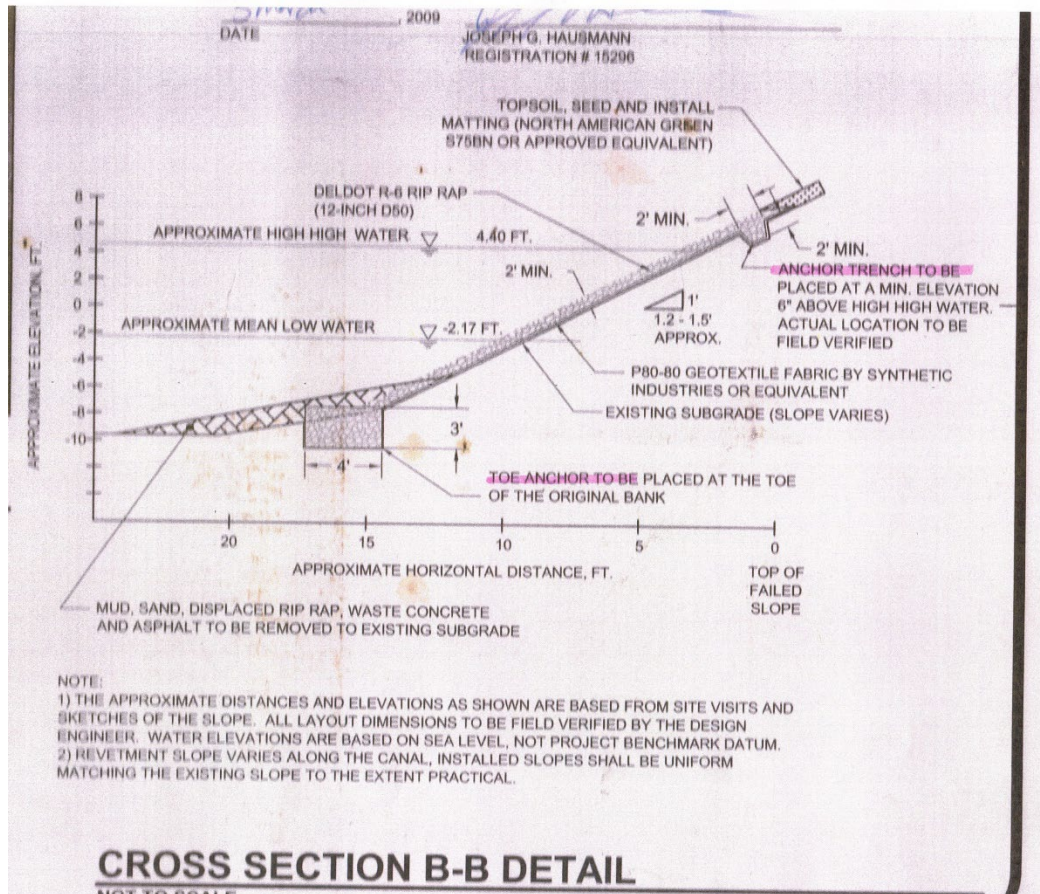
Both revetments, the one in Slide #12 and the one being considered for the Delaware City Branch Channel were designed by Duffield Associates. The applicant's speaker was a Duffield associate. The speaker knew or should have known his statement from an engineering standpoint was incorrect. Below is Slide #11 from the Applicant's Public Hearing Presentation.



**Figure 9. Slide #11 from Applicant's Public Hearing Presentation, Cross-Section of Design**

Slide #11 shows a cross-section of the revetment with an exaggerated vertical scale. It shows a simple rip-rap revetment with a vertical height of 22.5 feet (from bottom to top) and a 2:1 slope armored with 24" of R-5 rip-rap placed on a geotextile material. There is no anchor trench. There is no toe anchor shown in Slide #11.

Below is Figure 9, the Duffield Associates design for the west bank of the Delaware City Branch Channel.



**Figure 10. Cross-section Detail by Duffield Associates of west bank slope stabilization revetment**

The design shown above has structural components not used in the Fort DuPont Revetment design. Notice the use of an anchor trench at the top of the revetment. The filter cloth is placed in the entire length of the anchor trench and in the back, bottom and front of the 24" trench which allows an extra 2 feet of overburden rip-rap on the geotextile to hold it in place. The slope design is 1.2:1 or 1.5:1 and not 2:1 as the Fort DuPont design. An anchor toe 4'x3' is placed at the bottom of the slope to reduce the effects of scour and ice movement of the rip-rap. None of these design features occur in the Fort DuPont revetment design.

The photo of phragmites invasion on the right hand side of Slide #12 is labeled "Three Years Post Construction. The photo was taken in either the last week of December 2020 or the first two weeks of January 2021 and not in 2013 as suggested by the slide's

subtitle. The applicant provided inaccurate and misleading information during the Public Hearing.

### Chinked Rip-Rap

Below are two snippets from Slides #8 and #12 of the Applicant's Public Hearing Presentation. Notice the surface of the revetment in Slide #12 has a "Chinked" surface. A chinked surface mates the rip-rap so the surface has a more uniform, smooth, finished appearance. Compare the chinked surface of Slide #12 and to the finished surface of Slide #8, which is not chinked; rough, coarse and unfitted one stone to the other.



**Figure 11. Slide #12, Snippet from Applicant's Public Hearing Presentation.  
Note the smooth appearance of properly chinked rip-rap.**



**Figure 12. Slide #8 from Applicant's Public Hearing Presentation  
Note the loosely fitted, unfinished appearance of the rip-rap surface.**



## OTHER FACTS PERINTENT TO THE APPLICATION

### Aesthetic

Delaware City is recognized as a TREE TOWN USA. However, the redevelopment at Fort DuPont lacked a design-with-nature approach. The method of land clearance performed widespread, clear-cut removal of the old growth trees at Fort DuPont that provided an exceptional shade canopy.



**Figure 13. Fallen Trees, the quintessential Fort DuPont scorched earth redevelopment techniques; Man vs Nature.**

This permit application continues the legacy of a scorched earth approach to the park's redevelopment. The permit application details that all the trees and shrubs from the bank to be removed and replaced by grass and a fence. The applicant states that the aesthetic will be the same as that done in 2010 along the west bank of the Delaware City Branch Channel. However, there is a grave difference. At Fort DuPont the line of deciduous trees along the east bank provide needed shade and support the cooling to the townhomes along the bank. This is not the case for the revetment on the west side where there are no homes protected by the old growth trees.

Once the trees are gone, the afternoon summer sun will beat on the town houses unabated by the tree canopy this permit application removes and does not replace. Moreover, the un-chinked rip-rap will increase the heat reflected by the rip-rap producing an industrial aesthetic.

The applicant stated in its Public Hearing Presentation at Slide #7 that:

**"Erosion is threatening the stability of adjacent lands."**

With this knowledge and armed with public objection to the design of the slope revetment, the Executive Director at the January 2021 Board of Directors meeting for the Fort Corp announced he had the US Army Corps of Engineers (USACE) remove some of the stabilizing, old growth trees along the bank in December 2020. Concern for the slope stability would normally dictate to remove the trees after obtaining permits from DNREC and USACE. Given the concern expressed in the Applicant's Public Hearing Presentation it would seem prudent to delay de-stabilizing the slope any further by removing the trees whose roots were holding the slope in place until such time as all permits and construction materials were at hand. .

School children study the causes of the 1930's Oklahoma Dust Bowl and learn the importance of maintaining vegetation on slopes. With such concern for slope stability, it is curious as to why the Fort Corp would place tree removal high on their priority list before obtaining either the federal Section 10 Permit or the DNREC Subaqueous Lands permit.

Slide #8 and Side #10 (below) are from the Applicant's Public Hearing Presentation. The slides show the remaining trees after the USACE (the land owner) performed "preventive maintenance" at the request of the Fort Corp. The remaining trees are those trees leaning over the Branch Channel.



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**Figure 14. Slide #8 from the Applicant’s Public Hearing Presentation and Photo of unchinked rip-rap at Fort DuPont outfall revetment.**

Meanwhile the straightest old growth trees which provided the best canopy and best protection to the townhomes along the bank were destroyed during the “preventive maintenance” inspired by the Fort Corp..



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**Figure 15. Slide 10 from the Applicant’s Public Hearing Presentation, straight, tall old growth trees removed from the east bank of the Delaware City Branch Channel**



### Historic Nature of the Waterway

The permit application fails to mention a single word about the historic nature of the Delaware City Branch Channel as the last surviving portion of the original C&D Canal. To date, the State of Delaware has poured more than \$16MM to rehabilitate 6 structures and forfeited another \$2MM in revenue via state tax credits. Yet, the original C&D Canal, which has national historical significance, boasts of structures twice the age of the rehabilitated buildings at the Fort and has not received attention or interest in the preservation by the Fort DuPont Redevelopment and Preservation Corporation. The only interest in the national landmark is destruction.

This fact is more bizarre since Fort DuPont Redevelopment and Preservation Corporation recognizes itself as a “Historical Site” to the IRS and SBA. In the hours, month and years of boardroom discussions by members of Fort Corp, not a single breath as been uttered to preserve the national treasure.

As a historic property, any attempt to dispose of the Delaware City Branch Channel by the federal government should have triggered a Section 106 Investigation to protect this working artifact of American history. The movement to transfer the historic channel had no open dialogue, no public discussion, no stakeholder debate. The Mayor and City Council of the City of Delaware City were unaware that there was a movement by the Fort Corp to obtain the channel. The state legislators were unaware that the Fort Corp sought to transfer the channel. Even the Fort Corp’s own Board of Directors were unaware of the Executive Director’s activities. Some might say the transfer of the channel was done in secret, without public involvement and behind closed doors. Now the nation is faced with the loss of a national historic treasure to an organization ill-equipped to administer the rigors of a historic canal and navigable water of the United States.

I subscribe to and ditto the comments provided by Erica Lindsey regarding the historical significance. The approval of this application will destroy the last remaining timbers and vestiges of the original C&D Canal. Clearly USACE and the National Park Service must meet with other stakeholders to preserve this landmark and maintain open and unfettered access it to the public. Moreover, the two applications for work along the Delaware City Branch Channel fail to recognize the Branch Channel as a navigable water of the United States. “Navigable waters of the United States” is a term of art with significant responsibilities. The lack of any acknowledgement by the Fort Corp indicates these are responsibilities indicate the Fort Corp is either unaware or refuses to administer. In either case, transfer of the canal jeopardizes safe marine passage.



### Past Performance

Past performance by the applicant is an indicator of future performance. The following additional information contains indicators of the Fort Corps attitudes and abilities with regards to fulfilling rigorous regulatory guidance and engineering acumen demanded of this project.

#### Past Performance: 2017 Permit Application.

In a 2017 Subaqueous Lands Permit Application the Fort Corp stated that on the same parcel of land between Wingate Road and the river the Fort Corp intended to install two drainage outfalls. The permit was approved. This parcel is at the north side of the development. It again was the National Park Service 6(f) parcel of land. This application was approved one year before the 2018 WRDA legislation was enacted. The application lacked the truthful owner of the land, it lacked the truthful parcel of land used as the work site, it lacked the landlord's consent.

No work on the outfalls was done during the period that the permit was active. An extension was requested and granted after the permit expired. The extension expired on October 31<sup>st</sup>. However, work continued on the project until January 2021. In the applicant's Slide #8, from the Applicant's Public Hearing Presentation one can see that the tidal gates had not been installed as they are today. The permit explicitly mentioned that all work had to be complete by October 31<sup>st</sup> 2020 to include the tide gates. The Fort Corp worked outside the time period of the permit extension to install the tide gates and do other work.

Additionally, the work on the outfalls did not use the geotextile material under the rip-rap and failed to use the turbidity curtains as required by the approved engineering drawings. Although the work took place in "navigable waters of the United States", there was no awareness of such in the 2017 permit as there is none in the permit being considered today. As such, the Fort Corp failed to coordinate its work with the United States Coast Guard, commercial marine traffic and ignored the safety of the boating public. To date, a FOIA to the Baltimore and Philadelphia USACE Districts has not returned the signed, authorized Section 10 Permit for either this application or the 2017 Subaqueous Lands Application.

In short, the past performance of the 2017 Permit was substandard. One cannot expect future performance to improve.

Past Performance: Unlicensed, Unsafe Open Pit Mine Operations.

The Fort Corp operates an unlicensed open-pit mine for the past two years or more. For many months the open-pit mine lacked any Sediment and Erosion Control. Erosion and Sediment Control only became an issue when the leadership of the Fort Corp was challenged personally by the City Manager of the City of Delaware City. However, after the Erosion and Sediment Control devices were installed the mine which is filled with 4 to 6' of water had no 6' tall fencing, had no gates, had no child-proof gates, had no life saving devices and had no method for a person to exit the steeply excavated walls.

Past Performance: Lack of Community Involvement& Communications

Fort DuPont Redevelopment and Preservation Corporation does not have a history of community involvement that one would expect from a public instrumentality. The master plan for the development is done in a vacuum. The master plan is more a moving target of opportunity. Members of the Board of Directors of the Fort Corp chuckle among themselves of the "flavor du jour" with each rendition of the "new" master plan. There is no steady hand with the master plan but is a hodge-podge of "what can we sell today" ideas, thoughts and willing partnerships. The organization lacks steady leadership; leadership that communicates with the board, the city, the public and the residents of the development. Even in Zoom board meetings one can here board members ask, "So this is the plan now? Or "when did the plan change?"

As a public instrumentality, the organization failed to comply with placing corporate meetings on the Delaware Public Meetings Calendar. When asked about the non-compliance the question was meant with a scoff and replied "Noted". However, there was no change until public outrage at the organization manifested itself in a Special Meeting of the Mayor and City Council of City of Delaware City.

The Executive Director without board approval, without coordination with either state legislator, without the consent of the City of Delaware City's City Council acted alone to have the Delaware City Branch Channel to attempt to transfer to the Fort Corp.

This action, done in a vacuum defies logic. The Delaware City Branch Channel is a navigable water of the US for which the organization is ill equipped to administer. One need only to look at both this application and the 2017 Permit Application to understand the Fort Corp lacks the coordination required for a sophisticated maritime regulations.

Although the name "Preservation " is in the corporate name, a Section 106 Review should be done prior to any transfer to any lands. The application attempts to materially

misrepresent the historic nature of the pre-1969 structures in the Branch Channel. The engineering drawings depict some of the remnants of the only remaining vestiges of the original Chesapeake and Delaware Canal. This application destroys these remnants, denying the public witness to the development of the nation. The historic nature of the Delaware City Branch Channel is best transferred to the First State National Historical Park than to the Fort Corp as it has no idea of the channels heritage.

The Fort Corp's lack of communication extends not only to its own board of directors but to the citizens of Delaware City and to the City of Delaware City. The Executive Director was requested to update the City Council quarterly which the Executive Director refused. This permit which impacts the residents of Fort DuPont was not discussed with the homeowners.

#### Past Performance: Previous Clean Air and Clean Water Violations

The Fort Corp has a variety of complaints which stem from its Clean Air and Clean Water violations. Daily clouds of dust leave the work site with no adherence to the Clean Air standards for construction sites. Water trucks are seldom seen working at the site while dozers and excavators routinely fill the air with dust and sand. Exhibit B is a statement by a guest the marina which speaks to the careless approach the Fort Corp assumes to Clean Air standards.

DNREC received notice of Clean Air and Water violations as they occur. Some of the previously reported violations are shown below. To date, the Fort Corp, wholly owned by DNREC with no other shareholder, has received no fines for these repeated violations.



**Figure 16. Sample releases from Fort DuPont across the Delaware City Branch Channel in violation of the Clean Air Act reported to DNREC Enforcement Section.**



**Figure 17. Photo of Water Pollution from Fort DuPont construction reported to DNREC Enforcement Section.**

Special Privileges for the Fort DuPont Redevelopment and Preservation Corporation?

Whether accurate or not, the continued processing of this application appears to offer the perception to the public that the Fort Corp gets special privileges. To the public it appears that the Fort Corp does not need accuracy in its permit applications. The perception is that even with glaring errors and omissions, whether intentional or accidental, this application and other applications the Fort Corp may submit proceed through the DNREC process unchallenged.

State of Delaware regulations are clear about processing incomplete or false permit applications:

**3.1.1.2 The application for every type of activity shall provide the information requested in the appropriate application form. No application shall be considered complete or acted upon until the application is deemed complete by the Department. Providing false or inaccurate information shall be grounds for denial or revocation of a permit or lease and shall be grounds for a civil or criminal penalty. - 7504-Delaware Administrative Code**

**Bottom-line:** The Fort DuPont Redevelopment Corporation is a well-funded public instrumentality. To date the Fort Corp has used more than \$16MM in direct taxpayer funds to rehabilitate a handful of 1900's era residences and act as a site developer for private industry. The Fort Corp hires legions of vendors and consultants and pays competitive wages and fess. The intentional and accidental material misrepresentations and omissions in this application are more the work of an inexperienced intern than a multi-million dollar public instrumentality.

For example, the inability to place the actual location of the work site, the inability to use the correct name of the Delaware City Branch Channel, the inability to place in words the boundaries of the work site, the lack of knowledge regarding a navigable water of the US, the decision to de-stabilize the slope even more by removing the largest. Tallest trees along the bank and the inability to perform 6<sup>th</sup> grade math are embarrassing not only to the organization but its vendors and the tax-payer who pays for these sophomoric works.

This letter and accompanying facts provide meritorious objection to the subject application. This letter requests the application be rejected and returned to the applicant per the application instructions. The applications first instruction required the return of the application for missing and inaccurate information in September 2020 before the public notice was published.

**Exhibit A to Public Hearing Response to Fort DuPont Subaqueous Lands Permit**

**E-Mail from Executive Director, Fort DuPont Redevelopment and Preservation Corporation to City of Delaware City Officials**

**From:** Jeffrey Randol <[jrandol@fortdupont.org](mailto:jrandol@fortdupont.org)>  
**Sent:** Friday, January 29, 2021 10:59 AM  
**To:** Paul Johnson >  
**Cc:** David Baylor >; Powell, Michael S. (DNREC) >  
**Subject:** Re: Use of CFD after transfer to FDRC - Municipal Dock dredging

The Branch Canal transfer is in process. Nothing happens quickly with the Corps. The delay has been in large part due to the survey and title work. I am hopeful that the transfer will take place this year. The reason for the transfer is in large part to facilitate our development of the marina village, which includes the residential develop being proposed by Lennar. There are roughly 20 Lennar units to be built on a portion of the Corps property. The balance of their land is designed for a marina, retail shops and restaurant. We should be in front of the Planning Commission within 6 months for the Lennar project and would plan to start construction next spring. Removing soil from the disposal site will be part of the construction work. Soil from the disposal site will be used to build the levee and bike path along the water front. With this in mind, my thoughts are as follows:

1. Use the current disposal site on the Branch Canal if we are assured it will be dried out and suitable for use on the levee work come next spring/summer. A different location for future dredging would still need to be figured out, but this might buy some time. I don't know how long it would take for the new dredge material to dry out. So that needs to be researched.
2. Use the Corp's Reedy Point North Disposal site, which I am told is available so long as an equal amount of material is removed. We have a location on our site where the material removed could be placed.
3. Place the material along our shoreline as part of a larger plan to restore the shoreline. We have conceptual plans, but not yet designed for permitting. If option 1 works, then we should think through this option for future dredging.

My thoughts for now.

Jeff

**Jeffrey D. Randol**

**Executive Director**

**Fort DuPont Redevelopment & Preservation Corporation  
260 Old Elm Ave, PO Box 521, Delaware City, DE 19706**

**W: 302.838.7374  
C: 215.768.4429**

[fortdupont.org](http://fortdupont.org)

**Exhibit B to Public Hearing Response to Fort DuPont Subaqueous Lands Permit**

**E-mail from Concerned Citizen Regarding Lack of Pollution Controls and Fort DuPont Worksite**

**From:** Peter Anderson

**To:** "delawarecitymarina@rocketmail.com" <delawarecitymarina@rocketmail.com>

**Sent:** Saturday, October 17, 2020, 02:11:14 PM EDT

**Subject:** MY FIREFLY - Long-stay dockage cut short

RE: MY FIREFLY - Serenity 64 - Solar powered yacht

Dear Tim,

It is with deep regret that I must cut short our intended stay here at Delaware City Marina.

As you know, it was our intention to remain docked at the marina into the winter months and to undertake the discussed battery and electrical maintenance with the assistance of your boat yard personnel. However, primarily due to the building site works across the river, I am sorry to say that I will be taking FIREFLY to an alternate location.

By way of explanation, the noise of heavy machinery starting in the early mornings has become too much to bear. We also had to suffer the noise of that drainage pump, running 24hrs a day for the better part of a week.

Secondly, and perhaps more importantly, the site creates enormous amounts of gritty dust and dirt fallout. Apart from being potentially damaging to our teak decks and paintwork, we need to very gently clean the entire vessel TWICE daily. Furthermore, the risk of surface damage to our 42 solar panels forces me to relocate the yacht without further delay.

I am truly sorry about this decision. We have thoroughly enjoyed our stay and your hospitality at this pretty and delightful marina. Please do keep in touch and let me know when those disruptive building works are completed and all is calm once again!

Kindest regards,

Peter Anderson

Fleet Captain

SERENITY YACHTS